IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

OP.No. 26679 of 1999(A)

PETITIONERS:
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1. **PURUSHOTHAMAN, SON OF VELU, 68 YEARS, RESIDING AT KALATHIPARAMBIL, PERUMTHURUTHU MURI, KANJIKUZHI VILLAGE, CHERTHALA TALUK P.O. MUHAMMA.**

2. **SARAMMA, WIFE OF PURUSHOTHAMAN, AGED 60 YEARS, KALATHIPARAMBIL, KANJIKUZHI VILLAGE, CHERTHALA TALUK , P.O. MUHAMMA.**

BY ADV. SRI.V.L.SHENOY

RESPONDENTS:
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1. **THE DIRECTOR OF COIR DEVELOPMENT, OFFICE OF THE COIR DEVELOPMENT OFFICER, THIRUVANANTHAPURAM.**

2. **THE COIR PROJECT OFFICER, OFFICE OF THE LIQUIDATION INSPECTOR (COIR), NEAR ALAPPUZHA SOUTH POLICE STATION & COLLECTORATE, ALAPPUZHA.**

3. **THE LIQUIDATION INSPECTOR (COIR) OFFICE OF THE INQUIDATION INSPECTOR (COIR), ALAPPUZHA.**

4. **THULASI, W/O. LATE THANKAPPAN, PEEDIKAYIL, HOUSE, PATTANAKKAD, VAYALAR WEST, CHERTHALA.**

5. **SREEDEVI, D/O. LATE THANKAPPAN , RESIDING AT PEEDIKAYIL HOUSE OF DO. DO.**

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6. SREEKUMARI, S/O. LATE THANKAPPAN, REISIDING AT PEEDIKAYIL HOUSE OF DO. DO.

7. SREENIVASAN, SON OF LATE THANKAPPAN, RESIDING AT DO. DO.

8. SREEKALA, D/O. LATE THANKAPPAN, DO. DO.

9. YESHODHARAN, 'SINDHU NIVAS' , SON OF PENNAMMA MADHAVI AMMA, SUBRAMANIAPURAM WEST, AVALOOKUNNU P.O., ALAPPUZHA.

10. ANANDAN, SON OF MADHAVI AMMA, KAITHAKULANGARA, SUBRAMANIAPURAM WEST, AVALOOKUNNU P.O. ALAPPUZHA.

11. VIJAYAN, SON OF MADHAVI AMMA, DO. DO.

12. OMANA, D/O. MADHAVI AMMA, DO. DO.

BY ADV. SRI.V.N.SWAMINATHAN
SRI.S.DILEEP
SMT.K.JAYAKUMARI
GOVERNMENT PLEADER SRI.P.N.SANTHOSH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.26679/1999

ORDER ON CMP. NO.45084/1999 IN OP. NO.26679/1999

DISMISSED

22.10.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE ISSUED BY 2ND RESPONDENT NO. 03/1554/90 DT. 31.7.90.

EXT.P2:- COPY OF THE NOTICE DT. 8.2.90 ISSUED TO THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE REPRESENTATION MADE BY THE IST PETITIONER DT. 18.12.96.

EXT.P4:- COPY OF THE REPRESENTATION DT. 11.12.95 MADE BY THE 1ST PETITIONER BEFORE THE HONOURABLE CHIEF MINISTER OF KERALA.

EXT.P5:- COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT NO.CS-104/112/58 DT. 5.4.97.

EXT.P6:- COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT NO. CS/112/58/19 L1(C) DT. 29.7.97.

EXT.P7:- COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT NO.CS-112/58/L1(C) DT. 12.11.97.

EXT.P8:- COPY OF THE ORDER DT. 22.1.98 IN OS. 4/86 ON THE FILE OF SUB COURT, CHERTHALA.

/TRUE COPY/

P.A. TO JUDGE

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.26679 OF 1999

Dated this the 22nd day of October, 2007

JUDGMENT

The petitioners, a couple, obtained different decrees, by which, they are entitled to a portion of the properties (66 cents) which belonged to late Thankappan, the predecessor-in-interest of respondents 4 to 12. In execution of those proceedings for specific performance, the petitioners have taken delivery and are in possession and enjoyment of that parcel. A total amount of Rs.27,000/- was also deposited by them; i.e., Rs.13,000/- in O.S.No.34/85 and Rs.14,000/- in O.S.No.4/86 of the Sub Court, Cherthala.

2. Thereafter, at the instance of the Project Officer (Coir), Alappuzha, certain actions were taken for recovery of amounts due from Thankapan. Petitioners, through their learned counsel, addressed Ext.P2 to the Project Officer (Coir) on 8.2.1990, intimating that the aforesaid amount of Rs.27,000/- is lying with the Sub Court, Cherthala to the credit of Thankappan, the debtor

in the different matters, under which, the Project Officer is entitled to attach the assets of Thankappan.

3. The petitioners have been driven to file this writ petition in 1999, nine years after Ext.P2, because, revenue recovery proceedings had reached their doors by action against the property obtained by delivery through court, consequent on the decrees for specific performance.

4. The legal niceties of the quality of a decree for specific performance under the Specific Relief Act qua the entitlement of the State under revenue recovery laws and any priorities are not matters required to be gone into to settle this case finally in accordance with justice.

5. It is admitted that Ext.P2 was received in 1990. The learned Government Pleader submits today, on latest instructions, that the present outstandings from Thankapan had grown to Rs.26,921/- as on 12.9.2007. This means, it is still below the total principal amount deposited in the C.C.D. a/c with

the Sub Court, Cherthala in O.S.No.34/85 and O.S.No.4/86, which deposits are lying there from 26.3.1987 and 17.1.1986 respectively. One does not have to spent much time to note as to how easily the State could have reached and settled the revenue recovery demands without much of a burden on the debtor also, if prompt action had followed Ext.P2.

6. The counter affidavit discloses, among other things, that the officers of the State were taking different steps to get the amounts in the C.C.D. deposits attached, which ultimately become infructuous, the blame being passed on, also to the Government Pleader at that end. I do not want to say much on that.

7. As of now, the learned counsel for the petitioners submits that even today, the aforesaid amounts are lying in the C.C.D. account because, even Thankappan or his legal representatives could not withdraw it since their request in that regard had been refused.

8. Having regard to the totality of the facts and circumstances, it requires necessary that the interest of the State, that of the petitioners and of the legal representatives of the debtor are concluded in accordance with law and justice. Hence, this writ petition is disposed of in exercise of authority under Article 226 and 227 of the Constitution of India, in the following terms:

(i) All amounts in deposit in O.S.No.34/85 and O.S.No.4/86 of the Sub Court, Cherthala will continue in C.C. deposit as of now. An appropriate officer on behalf of the State will make a fresh application claiming such amounts on the strength of the demands made as evidenced by Ext.P1. The Sub Court, Cherthala will take up that application and pass appropriate orders in the light of what is stated above, since, Ext.P1 is conclusive of the liabilities of the defendant in those cases. As a consequence, necessary further orders shall be issued for transferring such amounts, as may be found necessary, to satisfy the debt in terms of Ext.P1 from the C.C.D. account to such

account of the Revenue, as may be sought for on behalf of the State.

(ii) If any amount is left after being dealt with in accordance with what is stated above, the same may be disbursed to the appropriate applicant, if any, in accordance with law.

(iii) There shall be no revenue recovery action against the writ petitioners or against the property they have obtained by delivery following decrees in O.S.No.34/85 and O.S.No.4/86 of the Sub Court, Cherthala. If the outstandings due from the debtor under Ext.P1 is not satisfied by the above process, any further assets referable to him could be proceeded with in accordance with law. It is clarified that this judgment would not stand in the way of any such action. However, it shall be ensured that no property, as obtained by the petitioners in terms of the decrees in O.S.No.34/85 and O.S.No.4/86 of the Sub Court, Cherthala, is disturbed in any manner.

The petitioners are directed to produce a copy of this judgment before the Sub Court, Cherthala. The Office will also communicate a copy of this judgment to that court.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.26679 OF 1999

JUDGMENT

22nd OCTOBER, 2007.

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